

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION-#-04-30201-MAP

DAVID RIBEIRO, PRO SE PLAINTIFF

V.

THE HOLYOKE POLICE DEPARTMENT

THE CITY OF HOLYOKE

POLICE OFFICER DONZE,

DEFENDANTS.

PLAINTIFFS OPPOSITION TO DEFENDANTS

SUMMARY JUDGEMENT MOTION.

FILED
CLERK'S OFFICE

2006 DEC 26 A 11:05

U.S. DISTRICT COURT
DISTRICT OF MASS

- 1)on 7-12-04 the plain tiff was falsely arrested by defendants on his way to work. Plaintiff stopped at building(place of arrest) to purchase his daily supply of marijuana.
- 2)While the plaintiff was waiting for his purchase,police came into building with guns drawn and told plaintiff to show his hands,plaintiff complied.
- 3)Police arrest plaintiff.Plaintiff ask police what he is being arrested for,police did not say at that time.
Police ask plaintiff many questions about a robbery,gun and mask.These questions were asked without any miranda warnings.
- 4)While plaintiff was handcuffed in back of cruiser,police search building and find items used in a robbery,gun,mask clothes in some trash on the top level of building,according to what police testified to.
- 5)Plaintiff was taken to scene of crime for an unnecessarily suggestive one on one confrontation for identification purposes.
- 6)The victim came out from a store to identify plaintiff in the back seat of cruiser through the back window(window was up). Victim told police he was not sure if the plaintiff was the person who robbed him.At this time officer Donze forceably attempted to put mask on plaintiff,however,plaintiff was moving and screaming to prevent officer Donze from putting mask on plaintiff.Plaintiff was screaming telling officer Donze that plaintiff did nothing wrong and that police had the wrong guy.At this time officer Donze was angry that plaintiff was not cooperating and proceeded to threaten plaintiff specifically saying"YOU BETTER COOPERATE WITH US YOU FUCKING SPIC OR YOUR GOING TO GET IT" then he continued to say "people like you ruin our city"
- 7)At this time plaintiff was terrofied.When the victim stated to police that he was not sure if the plaintiff was the person who robbed him police stated to victim"YEAH THATS HIM!"
There was never a positive identification by victim.

7) Police never conducted a photo array or a line-up.

plaintiff was transported to police station. At police station plaintiff was telling police that he did not commit the crime that he is accused of. Plaintiff tried to explain to police that a man ran into the building while I (the plaintiff) was waiting for his marijuana purchase. Police did not want to hear what the plaintiff had to say.

8) LT. Micheal Higgins attempted to use coercion, word manipulation and trickery to claim that plaintiff confessed to crime.

PLEASE SEE EXHIBIT #1 POLICE REPORT,

As you can see LT. Micheal Higgins attempted to make plaintiff confess. However plaintiff never confessed to any crime, police don't have an electronic recording of alleged confession and plaintiff never signed a certified statement against himself admitting to any crime. One of the many lies by police the plaintiff can prove is that police claim that defendant was mirandized and that plaintiff signed miranda warning card.

PLEASE SEE EXHIBIT #-2 UNSIGNED MIRANDA CARD

Police claim in report several times that plaintiff was mirandized and that plaintiff signed miranda warning card.

PLEASE SEE EXHIBIT #2 ALSO., FABRICATED POLICE REPORT.,

9) At statement suppression hearing dated 2-17-05 police officer

Donze attempted to change the police report at all cost including perjuring himself by testifying at said hearing to say -

"The defendant refused to sign miranda warning card."

Officer Donze only changed his story after my attorney made

him aware of what police wrote in police report and the conflicting statements by police officers at statement suppression hearing.

DEFENDANTS EXHIBIT#1 POLICE REPORT
INDICATING AN ALLEGDED CONFESSION
WITH NO EVDENCE SHOWING A VOLUNTARY
WAIVER. EVEN IF THE DEFENDANT DID
CONFESS TO CRIME THE REPORT SHOWS
THAT THE ALLEGDED CONFESSION
WOULD HAVE BEEN INVOLUNTARY
ACCORDING TO LAW.

Ref: 04-1867-AR

- While in the station as Commanding Officer I went to booking area as there was a subject there under arrest for an armed robbery from High Street that just occurred.

- Upon arrival I found a male subject (MR. DAVID RIBEIRO) standing before booking desk and he was saying we had the wrong person and that he did nothing wrong. I took notice that this party was sweating heavily and was unable to stand still and kept walking around booking area.

- MR. RIBEIRO was given his miranda rights and was asked questions to complete booking reports which included his home address. Upon completion of booking he was informed of charges

- 1) Armed Robbery while Masked
- 2) Possession of Firearm without LTC
- 3) Possession of Ammunition without Permit

He was again given his miranda rights and told of right to use phone to assist himself with bail.

- Knowing that Springfield and area Police Departments were investigating armed robbery complaints the last few weeks and MR. RIBEIRO stated he lived in Springfield I went out to take further look at MR. RIBEIRO physical description.

- When I re-entered the booking area I found that MR. RIBEIRO was sitting on floor waiting to be printed. He was still saying that he did nothing wrong and that we got the wrong guy and continued to say the same thing over and over. I asked him if he had told me he lived in Springfield and he told me yes. I said you're not the guy who's not been holding up places in Springfield are you? He asked me what I meant by that? I told him that Springfield Police were looking for a muscular male who was holding up stores and asked if he did those hold-ups?

- MR. RIBEIRO stated he didn't do any of those hold-ups and said to have Springfield Police come and look at him. I then said to him you didn't do those hold-ups you only did this one? MR. RIBEIRO then said, yea I only did this one. When I pointed out his admission to the armed robbery he quickly changed his story and said he didn't rob anything.

PLEASE NOTICE IN THE LAST TWO PARAGRAPHS
OF THIS PAGE THAT LT.HIGGINS WAS CLEARLY
USING COERCION TO ATTEMPT TO MAKE THE PLAINTIFF
MAKE AN ALLEDGED CONFESSION.
THIS IS ANOTHER LIE BY POLICE, PLAINTIFF NEVER
CONFESSED TO ANY CRIME.

MASS.CRININAL PRACTICE VOL.#1
§ 19.4B.C INVOLUNTARYNESS OF
CONFESSION

"A CONFESSION TO BE ADMISSIBLE MUST BE THE PRODUCT OF A FREE INTELLECT,FREE AND VOLUNTARY,..THE PRODUCT OF A RATIONAL INTELLECT AND FREE WILL,...AND A MEANINGFUL ACT OF VOLITION. CONFESSIONS ARE INVOLUNTARY OR COERCED IF THE SUSPECTS WILL HAS BEEN OVERBORNE.AT COMMON LAW SUCH CONFESSIONS WERE EXCLUDED AS UNRELIABLE AND THEREFORE INCOMPETENT. BASING A CONVICTION IN WHOLE OR IN PART ON AN INVOLUNTARY CONFESSION ALSO VIOLATES . . . DUE PROCESS UNDER THE 14th AMENDMENT AND ARTICLE 12 OF THE MASS.DECLARATIONS OF RIGHTS.WITHOUT REGARD FOR THE TRUTH OR FALSITY OF CONFESSION...AND EVEN THOUGH THERE IS AMPLE EVIDENCE ASIDE FROM THE CONFESSION TO SUPPORT THE CONVIC TION. THIS RULE OF EXCLUSION PROTECTS HUMAN DIGNITY BASIC FAIRNESS AND THE PRIVILEGE AGAINST SELF INCRIMINATION,IN ADDITION TO EVIDENTIARY RELIABILITY.UNLIKE THE 5th AND 6th AMENDMENT EXCLUSIONARY RULES,THE RULE EXCLUDING COERCED CONFESSIONS INCLUDING THE COMMONWEALTHS"HUMANE PRACTICE" APPLIES TO COERCIVE ACTIONS OF PRIVATE CITIZENS AS WELL AS LAW ENFORCEMENT AGENTS.

COM V.VASQUEZ,387 MASS.96.101,N.9(1982)
COM V.ALLEN,395 MASS.448,455(1985) COM V.MAHNKE,368 MASS.661-
680,(1975) COM V.MANDILE,397 MASS.410,413(1986)
MIRANDA V.ARIZONA,384 U.S 436,476,(1966)

ANY EVIDENCE THAT THE ACCUSED WAS THREATENED,TRICKED OR CAJOLED INTO A WAIVER WILL OF COURSE SHOW THAT THE DEFENDANT DID NOT VOLUNTARILY WAIVE HIS PRIVILEGE.

PLAIN TIFFS EXHIBIT-2

FABRICATED POLICE REPORT INDICATING LIE BY POLICE THAT PLAINTIFF WAS MIRANDIZED AND SIGNED MIRANDA WARNING CARD.

ALSO IN EXHIBIT#-2 IS THE MIRANDA CARD WITHOUT PLAINTIFFS SIGNATURE CONTRARY TO WHAT POLICE CLAIM IN REPORT.

Arrest #: 04-1867-AR

Call #: 04-25085

OFFENSE(S)

A/C STATE LAW

LOCATION TYPE: Convenience Store
SAMS FOOD STORE
515 HIGH ST
HOLYOKE MA 01040

Zone: RA-1

ROBBERY, ARMED & MASKED

C 265 17

OCCURRED: 07/12/2004 0619

WEAPON/FORCED USED: Handgun

FIREARM, CARRY WITHOUT LICENSE

C 269 10(A)

CRIMINAL ACTIVITY: Using/Consuming

WEAPON/FORCED USED: Handgun

FIREARM, AMMO WITHOUT FID CARD, POSSESS

C 269 10/G

CRIMINAL ACTIVITY: Using/Consuming

WEAPON/FORCED USED: Other

OTHER PROPERTIES

PROPERTY

STATUS

.38 SMITH WESSON SPECIAL CTG

04-1639-PR

Suspected

QUANTITY: 1

VALUE: \$251.00

SERIAL #: D490506

DATE: 07/12/2004

OWNER: RIBEIRO, DAVID J

6 BULLETS -/ 1 SILVER / 5 BRASS ROUNDS 04-1640-PR

Suspected

QUANTITY: 6

VALUE: \$0.00

SERIAL #: NOT AVAIL

DATE: 07/12/2004

OWNER: RIBEIRO, DAVID J

309.00 US DOLLARS VARIOUS BILLS

04-1641-PR

Recovered (Previously Stolen)

QUANTITY: 137

VALUE: \$309.00

SERIAL #: NOT AVAIL

DATE: 07/12/2004

RECOVERED: 137 VALUE: \$309.00

DATE: 07/12/2004

OWNER: RIBEIRO, DAVID J

1 RED WITH WHITE BANDANA

04-1642-PR

Suspected

QUANTITY: 1

VALUE: \$5.00

SERIAL #: NOT AVAIL

DATE: 07/12/2004

OWNER: RIBEIRO, DAVID J

1 RED DOO RAG

04-1643-PR

Suspected

QUANTITY: 1

VALUE: \$5.00

SERIAL #: NOT AVAIL

DATE: 07/12/2004

OWNER: RIBEIRO, DAVID J

1 MIRANDA CARD SIGNED BY DAVID RIBEIRO

04-1644-PR

Held for Safe Keeping

QUANTITY: 1

VALUE: \$0.00

SERIAL #: NOT AVAIL

DATE: 07/12/2004

lie #2

Ref: 04-1867-AR

On July 12th at approximately 0619hrs while assigned to car 361, we responded to Sams Food Store (515 High St.) for a 911 hang up. Dispatch informed us that they called the store back and the clerk stated he was just robbed. A description was given of a red masked man with a gun.

Officer Narey, Car 311 stated he has the suspect running down towards Worcester Place. We then made our way to the front of 17-19-21-23 Worcester Place where officer Narey stated he ran into the door way of this address. Officer Narey pointed to 21 Worcester Place. A code 1 was called (Radio silence) and officer Narey and myself entered the door way which had no first floor apartments. We withdrew our service weapons for safety and started our way up the stairs. Other officer were surrounding the building. We made our way to the stair way of the second floor landing and looked up to the third floor landing and saw a male wearing a red shirt and was trying to hide to the our left side of the stairway.

We then ordered the male to show us his hands and ordered him out into the open.

The male then walked out into the open with his hands out and he was ordered not to move. He started to walk down the stairs and I (Usher) holstered my weapon and went up to met him and handcuffed this male. This male, later known as David Ribeiro, was then given over to officer Morales and Briant. Myself and officer Morales then went to the top floor landing (3rd) and looked to the area where Mr. Ribeiro was hiding. In that area we noticed trash and a bike in the corner with a blue jacket hanging over that area. I then looked under the jacket and noticed a large amount of money thrown about. We then noticed a red bandana on the ground and a chrome colored handgun was wrapped inside the bandana. The evidence was taken into custody by me (Usher) and later placed into evidence.

Outside, Mr. Ribeiro, was transported to Sams Food Store by car 321 (Morales) where he was positively ID'ed as the suspect who robbed the store by the victim (Syed Masood). The victim stated that he had a blue jacket on and officer Morales showed him the jacket we found on the third floor and he positively IDed that as the jacket he was wearing. I then showed the victim (Syed Masood) the hand gun and the bandana and he positively ID'ed them as the gun and the red mask used by the suspect.

He was then transported tot he station where he was booked and advised of his rights by Lt. Higgins. At the station evidence was tagged and placed into evidence by officer Usher.

Evidence as follows:

- 04-1639-pr (1 smith wesson 38 special) loaded at time of recovery
- 04-1640-pr (6 bullets -taken out of gun at station)
- 04-1641-pr (309.00 us dollars- 104- 1\$ bills/ 25- 5\$ bills/ 8- 10\$ bills
- 04-1642-pr (1 red with white bandana)
- 04-1643-pr (1 red doo rag found by officer Briant)
- 04-1644-pr (1 miranda card signed by suspect)
- 04-1645-pr (1 blue wind breaker jacket)

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT
CRIMINAL ACTION
NO. 04-0913-01 thru
04-0913-04

COMMONWEALTH

V.

DAVID RIBEIRO

RECEIPT of DISCOVERY

Attached please find Discovery pages numbered 018 thru 020 regarding the above mentioned matter.

THE COMMONWEALTH,

Karen Bell (er)
Karen Bell
Assistant District Attorney

Edward Fogarty, Esq.
Defense Attorney

Date

December 21, 2004

copy

MIRANDA WARNING

1. "Before we ask you any questions, you must understand your rights."
2. "You have the right to remain silent."
3. "Anything you say can be used against you in court."
4. "You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning."
5. "If you cannot afford a lawyer, one will be appointed for you before questioning if you wish."

7/12/04 0630 hrs _____
(Date) (Time) (Signature)
Off. P. M. Kelly # 242 Det. Donnelly # 243
(Signature of witness) (Signature of Pol. Off)

Rev. Apr. 93

Holyoke Police Department
NARRATIVE FOR OFFICER DAVID R BEAUCHEMIN

Ref: 04-1867-AR

On 8-5-04 I completed processing the .38 caliber Smith and Wesson revolver and the six rounds of .38 caliber ammunition recovered by officers at 21 Worcester Place. I was not able to develop any fingerprints of value from that evidence.

Returned to evidence officer.

Ultimately, police committed perjury when they lied on the witness stand in regard to the plaintiff being positively identified, police lied about the plaintiff being mirandized, and police also lied about the plaintiff being allowed to use the telephone, and police lied in regard to where the plaintiff was viewed by victim at show-up identification. Police report indicates that the plaintiff was viewed by victim in back seat of cruiser through the back window(window up)(see plaintiffs exhibit #-3). Officer Donze lied and changed what was written in police report to testify and say at statement suppression hearing dated 2-17-05 and stated that the plaintiff was viewed by victim while plaintiff was standing outside the cruiser. The victim at trial stated that he viewed the plaintiff while the plaintiff was seated in cruiser with door open. It is apparent that police lied, victim lied, everyone lied to cover-up the fact that police arrested the wrong person for a crime the plaintiff did not committed. The victim at trial dated 5-3-05 stated that his perpetrator was five foot six inches tall, the plaintiff is five foot ten inches tall. The victim also stated at trial that his perpetrator was of dark brown skin color. The plaintiff is and olive skinned hispanic.

M.G.L.A 268B 1, page 359-perjury.,

"WHOEVER BEING LAWFULLY REQUIRED TO DEPOSE THE TRUTH IN A JUDICIAL PROCEEDING OR IN A PROCEEDING IN A COURSE OF JUSTICE WILLFULLY SWEARS OR AFFIRMS FASLEY IN A MATTER MATERIAL TO THE ISSUE OR POINT IN QUESTION, OR WHOEVER BEING REQUIRED BY LAW TO TAKE AN OATH OR AFFIRMATION IS REQUIRED, SHALL BE GUILTY OF PERJURY. WHOEVER COMMITTS PERJURY ON THE TRIAL OF AN INDICTMENT FOR A CAPITAL CRIME SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PRISON FOR LIFE, OR ANY TERM OF YEARS, AND WHOEVER COMMITTS PERJURY IN ANY OTHER CASE SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PRISON FOR NOT MORE THAN TWENTY YEARS OR BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS OR BY IMPRISONMENT IN JAIL FOR NOT MORE THAN TWO AND A HALF YEARS, OR BY BOTH SUCH FINE AND IMPRISONMENT IN JAIL."

- - PLAINTIFFS EXHIBIT#-3

FABRICATED POLICE
REPORT

Ref: 04-1867-AR

On 07/12/2004 @ 0618 hrs. while in car#351(Narey) heading east bound on cabot st. approaching High St. I observed a muscular dark skinned male with a red bandana on top of his head wearing a dark blue and white jacket run diagonally across cabot and High St. and down Cabot St. toward Commercial st. from the sidewalk in front of Sam's convenience store. The dark skinned male then ran into an alley from Cabot St. between Commercial St. and High st. toward Worcester place.

As I was driving over Commercial St I heard a transmission from the dispatcher at 0619 hrs. that an armed robbery just occurred at Sam's convenience store and the suspect had a red mask armed with a handgun. When I turned the corner from Commercial St. onto Worcester place I observed the same dark skinned male with the blue and white jacket and the red bandana on his head come from the same alley onto Worcester Place that I saw him run into on Cabot St. When he saw me he ran across the street and hid behind a parked car in front of 21 Worcester place. I then radioed to all units to go to Worcester place. When he saw me approaching with my cruiser he ran into 21 Worcester place and left the front door open. These are town houses which are side by side with only one front entrance and one stairway for each. I radioed that he ran into 23 Worcester place but the address was 21 Worcester place. Car#361 (Usher) then arrived and I pointed to officer Usher that the male ran into the open door at 21 Worcester place. We then proceeded into the stair way when we arrived on the second floor landing we looked up to the third floor landing and observed a male was trying to hide in the corner of the third floor landing. I drew my service weapon and covered Officer Usher who then proceeded up the stairs yelling to the male to show us his hands and he complied. Officer Usher then placed handcuffs on this male and escorted him down the stairs past me. This was the same person I saw run from the store and into the alley. This was also the same person who was behind the car and run into the open door at 21 Worcester place. but at this point did not have the jacket on. Officers Morales and Briant and Kelley were also behind me at this point. The male went with Officer Briant and Officer Briant read his rights while escorting him outside. and put him in officer Morales cruiser #321. I stayed a few minutes on the second floor landing then left the building and went outside. I stayed with Officer Briant while Officer's Morales and Usher were still in the stair way at 21 Worcester place. When Officer's Usher and Morales came out Officer Morales transported the suspect to Sam's Convenience store for Identification. The clerk Syed Masood positively I.D.'d the male in the back seat of 321 through the window of the cruiser. He (David Ribeiro) was then transported to the station by car#321 and was booked and read his rights by Lt. Higgins.

I stayed at Sam's and spoke to the clerk to get the facts as to what happened. the clerk identified himself to me as Syed Masood. Syed stated that while he was behind the counter counting the evening receipts he was looking down and counting the money. He heard the front door open and observed a dark skinned muscular male with a dark blue or black jacket with a red bandana covering his entire face except his eyes run over to the left side of the counter and enter the door that leads to the back of the counter where the clerk was standing counting the money. He stated that the muscular male then pointed a silver handgun at him and told him to open the register. The suspect stated if he didn't open the register he would shoot him. The clerk opened the register and the suspect then grabbed all the bills and left the change in the register. The suspect then grabbed all the loose money and held it in his hand and pointed the gun at and told him to go into the storage room and if he did not go in the suspect was going to shoot the clerk. The clerk went into the storage room and as he did this the suspect ran out the front door. The clerk said he went right to the telephone and dialed 911. When he dialed 911 he saw my cruiser drive by on Cabot St. approaching High St. and hung up the phone and ran out of the store to get my attention. When he realized he did not get my attention he ran back in the store and our dispatcher (Burns) had called him. He told our dispatcher he was robbed at gun point and gave the description to our dispatcher. Our dispatcher then gave out to all units that Sam's was robbed. The clerk stated he was unsure how much money was taken since he was just counting the receipts when the robbery occurred.

Officer Usher tagged all evidence found and placed the evidence into the evidence room.

PLAINTIFFS EXHIBIT#4

FABRICATED POLICE

REPORT INDICATING

DEFENDANT WAS

ALLOWED TO USE

TELEPHONE, WHEN DEFENDANT

WAS NOT ALLOWED

TO USE TELEPHONE



Holyoke Police Department
Arrest Report

Page: 1
07/23/2004

Arrest #: 04-1867-AR
Call #: 04-25085

Date/Time Reported: 07/12/2004 @ 0619
Arrest Date/Time: 07/12/2004 @ 0638
Booking Date/Time: 07/12/2004 @ 0638
OBTN: THOY200401867
Court: Holyoke
Court Date: 07/12/2004 @ 0900
Reporting Officer: OFFICER MARTIN NAREY
Booking Officer: Lieutenant MICHAEL HIGGINS
Approving Officer: Lieutenant MICHAEL HIGGINS
Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
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1	RIBEIRO, DAVID J 119 FEDERAL ST 2ND SPRINGFIELD MA	M	W	35	097-56-3450	413-534-8875
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HEIGHT: 510 WEIGHT: 230 HAIR: BLACK EYES: BROWN
BODY: MUSCULAR COMPLEXION: LIGHT BROWN
DOB: 08/02/1968 PLACE OF BIRTH: MANHATTAN, NY
LICENSE NUMBER: NOT AVAIL. ETHNICITY: HISPANIC

[APPEARANCE]

SHIRT: SPORT - SHORT SLEEVE
GLASSES WORN: NO
SCARS: SC R ARM(4" TRICEP), SC R FGR(MIDDLE FINGER)

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE
FATHER'S NAME: RIBEIRO, JOHN
MOTHER'S NAME: QUINONES, GLADYS

OCCUPATION: NONE

[RIGHTS/BOOKING CHECKS]

RIGHTS ADVISED BY: Lieutenant MICHAEL J HIGGINS DATE/TIME: 07/12/2004 @ 0638
PHONE USED: Y PHONED DATE/TIME: 07/12/2004 @ 0638
ARRESTEE SECURED: Y 07/12/2004 0639
ARRESTEE CELL #: M-10

FINGERPRINTED: Y
PHOTOGRAPHED: Y
SUICIDE CHECK: Performed
PERSONS: State&Federal
NCIC VEHICLE CHECK: Not Performed
INJURY OR ILLNESS: N - NONE

POLICE DID NOT ALLOW DEFENDANT
TO USE TELEPHONE EVEN AFTER
DEFENDANT REQUESTED TO DO SO

MASS.PRACTICE CRIMINAL LAW #32 PAGE 20 § 26.

procedure after arrest-telephone-call.,

A PERSON HELD IN CUSTODY SHALL BE PERMITTED TO USE TELEPHONE AT HIS OWN EXPENSE. THIS USE IS FOR PURPOSE OF ALLOWING THE ARRESTED PERSON TO COMMUNICATE WITH HIS FAMILY, FRIENDS, OR TO ENGAGE THE SERVICES OF AN ATTORNEY, OR TO ARRANGE FOR RELEASE ON BAIL.

THE STATUE REQUIRES THAT THE PERSON BE INFORMED OF HIS RIGHT TO USE THE TELEPHONE UPON HIS ARRIVAL AT SUCH PLACE OF DETENTION."

SUCH USE SHALL BE PERMITTED WITHIN ONE HOUR THERE AFTER.

IF THE ARRESTED PERSON IS INTENTIONALLY DEPRIVED OF HIS RIGHT TO USE THE TELEPHONE, EVIDENCE OBTAINED AS A RESULT OF SUCH INTENTIONAL DEPRIVATION SHALL BE SUPPRESSED.

WHERE POLICE REFUSE TO LET THE DEFENDANT USE THE TELEPHONE TO CALL HIS FRIENDS OR FAMILY OR A LAWYER WOULD BE IN VIOLATION OF M.G.L.A.(C)§§ 33A AND THE STATE DECLARATION OF RIGHTS.

- 10) Police ~~arrested~~ already had the plaintiff in custody, so why would police look for the real perpetrator. That would mean police would have to actually look for the person who robbed the victim. That would also mean that police would have to admit they arrested the wrong person for said crime.
- 11) Another lie by police is police claim that they allowed plaintiff to use the telephone. Plaintiff was not allowed to use telephone even after plaintiff requested to do so.
(PLEASE SEE EXHIBIT#-4 FABRICATED POLICE REPORT)
- 12) Police never conducted a photo-array or a physical line-up.
If police would have utilized these non-suggestive procedures, the plaintiff would not have been convicted for a crime he did not commit.
- 13) By police not conducting photo-array or line-up violates the plaintiffs due process rights under 14th amendment.
- "TO SUPPRESS IDENTIFICATION ~~TESTIMONY~~ TESTIMONY, DEFENDANT MUST SHOW THAT PROCEDURES EMPLOYED UNDER THE TOTALITY OF CIRCUMSTANCES WERE SO UNNECESSARILY SUGGESTIVE AND CONDUCTIVE TO MISTAKEN IDENTIFICATION AS TO DENY DEFENDANT DUE PROCESS OF LAW"
COM V. LEONARDI (1992) 604, N.E.2d, 23 MASS. 757.
- "DEFENDANT IS ENTITLED TO RELIEF IF IDENTIFICATION PROCEDURE WAS SO UNNECESSARILY SUGGESTIVE AND CONDUCTIVE TO IRREPARABLE MISTAKEN IDENTIFICATION THAT HE WAS DENIED DUE PROCESS OF LAW-COM V. SIMMONDS, (1982) 434, N.E. 2d, 1270, 386 MASS. - 234.

"TEST WHETHER A SINGLE IDENTIFICATION IS CONSTITUTIONALLY SUFFICIENT UNDER DUE PROCESS CLAUSE IS WHETHER THE CONFRONTATION IS UNNECESSARILY SUGGESTIVE OF THE DEFENDANT, SO AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELYHOOD OF A MISTAKEN IDENTIFICATION, COM V. MOON(1980) 405 N.E.2d 947, 380 MASS.751

SHOW-UP IDENTIFICATION

"AN IDENTIFICATION THAT RESULTS FROM THE PRESENTATION OF A SINGLE SUSPECT TO A WITNESS HAS BEEN CONSIDERED PARTICULARLY SUGGESTIVE AND FRAUGHT WITH THE POTENTIAL FOR TRAGIC ERROR, LEADING THE UNITED STATES SUPREME COURT TO CONDEMN "THE PRACTICE OF SHOWING SUSPECTS SINGLY TO PERSONS FOR THE PURPOSES OF IDENTIFICATION, AND NOT PART OF A LINE-UP...STOVALL V. DENNO, 388 U.S.293, 302, 87 S. CT. 1967, 18 L. Ed.2d, 1199(1967) ALTHOUGH ONE-TO-ONE CONFRONTATIONS ARE NOT PER SE EXCLUDABLE, THEY ARE DISFAVORED BECAUSE OF THEIR INHERENTLY SUGGESTIVE NATURE, DEJESUS-RIOS 990 F.2d AT 677; U.S.V. HINES 55 F.SUPP.2d 62, 69(D MASS. 1999) SEE U.S.V. WATKINS, 741, F.2d 692, 694(5th CIR 1984) IN THE INSTANT CASE, THERE WERE NO EXIGENT CIRCUMSTANCES SUCH AS A DYING VICTIM, WHICH WOULD WARRANT A ONE-ON-ONE PROCEDURE. Stovall, 388, u.s. at 302. In the present case, the defendant was brought to the alleged victim in a marked police cruiser after he had been placed in custody. "THE VICE OF SUGGESTION CREATED BY THE IDENTIFICATION... WAS THE PRESENTATION TO WITNESS OF THE SUSPECT ALONE HANDCUFFED TO POLICE CRUISER. IT IS HARD TO IMAGINE A SITUATION MORE CLEARLY CONVEYING THE SUGGESTION TO THE WITNESS THAT THE ONE PRESENTED IS TO BE BELIEVED GUILTY BY THE POLICE WADE, 388 U.S. AT 234.

NOTE: THE COMMONWEALTH DID NOT MEET THE TEST PURSUANT TO THE WADE-STOVALL-GILBERT TRILOGY IN IDENTIFICATIONS., RELIABILITY TEST

IN MASON V.BRATHWAITE,"THE COURT ACKNOWLEDGES THAT A WITNESS,S
RECOLLECTION CAN BE DISTORDED EASILY BY THE CIRCUMSTANCES OR BY
LATER ACTIONS OF THE POLICE OR PROSECUTORS"

STOVALL V.DENNO,388 U.S.293,87 S.CT.(1967)

COM V.JOHNSON,CITE AS 650 N.E.2d 1257(1995)

Nor did the commonwealth meet the prong standards pursuant

MASON V.BRATHWAITE.

"MANY TIMES IN CRIMINAL CASES THE FACT THAT A CRIME OCCURED IS
QUITE CLEAR;PERHAPS THERE IS A DEAD BODY OR A BURNED HOME,
HOWEVER, THE IDENTIFICATION OF THE DEFENDANT AS A CULPRIT WILL
BE THE SALIENT ISSUE AT TRIAL. MANY SOCIAL SCIENTISTS AND PSY-
CHOLOGISTS HAVE CONDUCTED COUNTLESS STUDIES DEMONSTATING THE
INACCURACY OF IDENTIFICATION.FURTHER,SOME STUDIES SHOW that THE
POLICE EXASPERATE THE INACCURACIES THROUGH THE MEANS BY WHICH
THEY CONDUCT THE IDENTIFICATION PROCEDURE THERE ARE PROBLEMS
WITH ALL types of procedures including but not limited to:
photo ARRAYS WHERE ALL PHOTOGRAPHS ARE SHOWN AT THE SAME TIME
RATHER THAN SEQUENTIALLY,INADVERTENT SUGGESSTIVE TECHNIQUES
BY THE POLICE,AND THE EFFECT OF THE POLICE OFFICER CONDUCTING
THE IDENTIFICATION PROCEDURE KNOWING THE SUSPECT.
INTERRACIAL IDENTIFICATIONS HAS ALWAYS BEEN A PROBLEM.HOWEVER,
AS THE STUDIES DEMONSTRATE,VERY FEW OF US CAN DESCRIBE ANY
INDIVIDUAL WE MEET OR SAW FOR A BRIEF TIME.
Even though the identification was suppressed,the defendant
should not have been convicted because the identification is
what the whole case is about.If police would have done a photo
array or line-up,those procedures would have proved that the
defendant did not commit the crime.

IN STOVALL V.DENNO.,

"CONFRONTATION OF ACCUSED FOR IDENTIFICATION

IS CRITICAL STAGE OF PROCEEDINGS AND COUNSEL

IS REQUIRED AT ALL SUCH CONFRONTATIONS

IN STOVALL ID COURTS KEY-100(1)

"RETROACTIVE APPLICATION OF RULES REQUIRING

EXCLUSION OF IDENTIFICATION EVIDENCE WHICH

IS TAINTED BY EXHIBITING ACCUSED TO IDENTIFYING

WITNESSES BEFORE TRIAL IN ABSENCE OF HIS

COUNSEL WOULD SERIOUSLY DISRUPT ADMINISTRATION

OF CRIMINAL LAWS"

as the Appeals Court has noted:

"IN ESSENCE, THE REVIEWING COURT APPLIES A TEST OF FAIRNESS WHICH FOCUSES ON THE REASONABLENESS OF THE POLICE PROCEDURES IN

~~THE~~ =

TERMS OF PREJUDICE...THE TEST BALANCES THE NEED FOR EFFICIENT POLICE WORK IN THE AFTERMATH OF A SERIOUS CRIME AGAINST THE DEFENDANTS CONSTITUTIONAL RIGHT THAT IDENTIFICATIONS MADE OF HIM DERIVE FROM THE WITNESSES INDEPENDANT MEMORY OF THE CRIMINAL FREE OF IMPROPER SUGGESTIONS BY POLICE.

COM V.VASQUEZ, 415 N.E.2d 858, 861(1981). CLEARLY THE DEFENDANT HAS THE INITIAL BURDEN OF SHOWING BY A PROPONDERANCE OF THE EVIDENCE, THAT THE CONFRONTATION WAS UNNECESSARILY SUGGESTIVE.

COM V.BOTELHO, 343 N.E.2d AT 881.

It is respectfully submitted that the facts present in the plaintiffs case have satisfied that burden.

Because of the arresting officers inept procedures by not conducting photo-array or line-up has caused the plaintiff an extreme miscarriage of justice and ultimately a false arrest and wrongful conviction was the result.

14)The plaintiff further contents that the conduct of the police was so egregious and caused prejudice to the plaintiff,that dismissal of the charges with prejudice is required.,,
COM V.MANNING,373 MASS.438,367,N.E.2d,636(1977).
COM V.CINELLI,389 MASS.197,449 N.E 2d 1207(1983).
COM V.CARSON,17 MASS.APP.CT.52,455,N.E.2d 647(1983)

15)The above cases indicate that a two-prong test is applicable to determine whether a matter should be dismissed by virtue of allegeded police misconduct.

First,whether or not the conduct of the police was improper.

If so,secondly,whether that misconduct was deliberate and

egregious or likely to pose a serious threat of prejudice.

"EVIDENCE OBTAINED AS A RESULT OF UNLAWFUL POLICE ACTIVITY IS

"FRUIT OF THE POISONOUS TREE". WONG SUN V. UNITED STATES, 371

U.S.471(1963).SUCH EVIDENCE IS INADMISSABLE AT TRIAL UNLESS

THE PROSECUTION ESTABLISHES THAT THE GOVERNMENT LEARNED OF THE

EVIDENCE FROM A SOURCE INDEPENDANT OF THE ILLEGALITY,THAT THE

CONNECTION BETWEEN THE POLICE MISCONDUCT AND THE CHALLENGED

EVIDENCE IS SO ATTENUATED AS TO DISSIPATE THE TAIN,OR THAT THE

EVIDENCE WOULD HAVE BEEN DISCOVERED INEVITABLY IN THE NORMAL

COURSE OF THE POLICE INVESTIGATION. COM V.LAHTI, 398 MASS.829,

89 829,833-834(1986)

MASS. PRACTICE APPELLATE PROCEDURE#41 2ND EDITION:

"THE UNITED STATES SUPREME COURT HAS NOTED THAT SOME

CONSTITUTIONAL RIGHTS ARE SO BASIC FOR A TRIAL THAT THEIR

INFRACTION CAN NEVER BE TREATED AS HARMLESS ERROR." EXAMPLES

OF THESE ARE COERCED CONFESSIONS,THE DENIAL OF THE RIGHT TO

COUNSEL AND AN IMPARTIAL JUDGE.TI IS DIFFICULT TO SAY WHETHER

THE STANDARD OF HARMLESS, BEYOND A REASONABLE DOUBT"IS

DIFFERENT FROM THE STANDARD OF "SUBSTANTIAL RISK OF MISCARRIAGE

OF JUSTICE." IN SUMMARY"BEFORE A FEDERAL CONSTITUTIONAL ERROR

CAN BE HELD HARMLESS,THE COURT MUST BE ABLE TO DECLARE

A BELIEF THAT IT WAS HARMLESS"BEYOND A REASONABLE DOUBT"

THE UNITED STATES SUPREME COURT FORMALLY DECLARED THAT THE

GOVERNMENT MUST PROVE EVERY ELEMENT OF EVERY CRIMINAL CHARGE

AGAINST A DEFENDANT BEYOND A REASONABLE DOUBT, .IN RE WINSHIP

397 U.S.358,90 S.CT.1068,25 L.E.d 2d 368(1970)

16)The plaintiff was arrested in building where items were found

that were used in a crime. Like the plaintiff stated at the beginning of this discovery that he was in building where contraband was found. The plaintiff was on his way to work, and stopped at said building to buy marijuana, which the plaintiff does everyday. While the plaintiff was waiting for his purchase, police came into the building and arrest plaintiff, telling him that he just robbed someone. Plaintiff was arrested in a high crime area, and police did testify to that at trial on 5-3-05. Police also testified at trial and stated that there were many people outside at time of crime, because it was morning rush hour. Ultimately, the plaintiff was in the wrong place at the wrong time.

The reason why the plaintiff was convicted of crime was because plaintiff was in mere proximity to contraband that was used in a robbery. However, the law states;

"MERE PROXIMITY TO CONTRABAND, ON PROPERTY WHERE IT IS FOUND AND ASSOCIATION WITH A PERSON(S) HAVING CONTROL OF IT ARE ALL INSUFFICIENT TO ESTABLISH CONSTRUCTIVE POSSESSION",, PLEASE-SEE UNITED STATES V. EARL, 27 F.3rd 423, 425 (9th CIR. 1994) UNITED STATES V. VASQUEZ-CHAN, 978, F.2d 546, 553 (9th CIR. 1992) COM V. ARAUJO (1995) 650 N.E.2d 352, 38, MASS. APP. CT. 960.

DAMAGES

The plaintiff has suffered emotional distress caused by officer Donze yelling at plaintiff to cooperate, then when plaintiff did not cooperate officer Donze called plaintiff a "FUCKING SPIC"! Then officer Donze ~~threat~~ threatened plaintiff if plaintiff did not cooperate. Plaintiff also was the victim of racial slurs, epithets, threats, and intimidation. These actions violate the plaintiffs civil and constitutional rights. Plaintiffs due process rights were violated by officer Donze by bringing plaintiff to show-up identification without counsel for pre-trial observations by victim. Plaintiffs miranda rights were violated by officer Donze attempting to coerce the plaintiff into making an involuntary alledged confession to crime.

Officer Donze fabricated police reports in regard to the plaintiff being mirandized and also lied about plaintiff signing miranda card. Officer Donze also violated the plaintiffs telephone rights by refusing to allow plaintiff to use telephone even after plaintiff requested to do so. Officer Donze fabricated police reports in regard to the plaintiff using telephone. The report indicates that a confirmed phone call was made by plaintiff, when in fact, the plaintiff was denied his right to use telephone to contact family or engage the services of an attorney.

The federal civil rights act protects citizens of the United States against threats, intimidation, racial slurs, epithets and coercion.

RELIEF SOUGHT

Plaintiff humbly demands to be compensated for said violations, which are clearly established civil and constitutional rights, that an ordinary police officer would know is malicious.

Plaintiff seeks compensatory, nominal and punitive damages against the defendants for said violations.

Plaintiff wishes to sue defendant in his official and individual capacities.

Plaintiffs monetary demand is in the sum of one million dollars in American currency (\$1,000,000) for damages plaintiff incurred at the hands of defendant.

CLOSING

Wherefore, plaintiff seeks judgement against the defendants, and any other relief this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED

DAVID RIBEIRO, PRO SE PLAINTIFF #W85454

M.C.I NORFOLK
P.O BOX 43

NORFOLK MA, 02056

SIGN

David Ribeiro

DATE

12-26-06

12-12-06

CERTIFICATE OF SERVICE

I, David Ribeiro, Pro se plaintiff certifies that on the date below have mailed copies to defendants and original to the clerk of the District Court at the address below via United States mail, first class, of enclosed opposition.

JONH VIGLIOTTI, ESQ
397 GROVE ST.
WORCESTER, MA, 01605

U.S DISTRICT COURT CLERK
1550 MAIN ST. RM. 512
SPRINGFIELD, MA 01103

CHARLES P. LAVELLE
HOLYOKE LAW DEPT.
20 KOREAN VETERANS PLAZA
HOLYOKE, MA 01040

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

RESPECTFULLY SUBMITTED
DAVID RIBEIRO, PRO SE, PLAINTIFF #W85454
M.C.I NORFOLK
P.O BOX 43
NORFOLK, MA 02056
SIGN David Ribeiro
DATE 12-12-06